

1. Croatia after Tudjman: the ICTY and issues of transitional justice

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Introduction

Croatia became a member of the NATO in April 2009 and is well on the way to becoming a full member of the European Union in the near future. The prospect of membership in these two international organisations has shaped both Croatian domestic and foreign policy over the past decade. The main obstacle to Croatia's earlier membership of the European Union was its incomplete and insufficiently impressive record on the issues of *transitional justice* in general, and of its (long-delayed) co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY).

As Victor Peskin and Mięcisław Boduszyński argue in their pioneering attempt to explain the Croatian policy of transitional justice,¹ 'no issue has polarised the post-authoritarian Croatian political scene as much as the issue of cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY)'. It was only following the radical change of its policy towards the ICTY after the 2003 period that Croatia became a candidate for EU membership. In this chapter, the author will explain the reasons for this radical change, and indicate what problems remain still unresolved in Croatia's current approach to transitional justice.. It is argued here that while Croatia has indeed significantly improved its cooperation with the ICTY, its achievements on the issue of addressing war crimes domestically (in the legal, political and social spheres) have been less impressive. The chapter concludes on a semi-pessimistic note, by questioning the prospects of further improvement in the area of *transitional justice* once the external pressure is removed following Croatia's accession to the EU.

The pre-2003 situation

Only a month after the passing away of its founder and first leader, Franjo Tudjman (in December 1999), his party, the Croatian Democratic Union (HDZ), lost power in parliamentary elections to an anti-Tudjmanist coalition of six parties, led by the Social-Democrat Ivica Račan. Soon after this, the HDZ presidential candidate, Mate Granić, came only third in presidential elections, which were won by another outspoken critic of Tudjman's policy since 1993, Stjepan Mesić. Soon afterwards, the ICTY indicted three Croatian generals (Rahim Ademi, Janko Bobetko and Ante Gotovina) for crimes committed during the 1990s. As Peskin and Boduszyński argue, once in opposition the HDZ developed a rhetorical strategy of equating 'the tribunal's

¹ Victor Peskin and Mięcisław P. Boduszyński, 'International Justice and Domestic Politics: Post-Tudjman Croatia and the International Criminal Tribunal for the Former Yugoslavia', *Europe-Asia Studies*, vol. 55 (2003), no. 7, pp. 1117-1142.

indictment against Croatia's war heroes with attacks on the dignity and legitimacy of the so-called Homeland War.² The 'Homeland War' – as Tudjmanist narrative insisted on referring to the conflict of the 1990s in Croatia – was the main element of the official narrative about the political identity of the new (post-1990) Croatian state. Built up into a new myth, the official interpretation of the 'Homeland War' contained all important aspects of historical Croatian myths, which were re-interpreted in the contemporary context.³ Criticism of the 'Homeland War', and especially court indictments of its main 'heroes', were presented as an attack on the very essence of Croatian independence.

This strategy worked. Not only did the ultra-cautious and internally heterogeneous Račan government already in mid-2001 cease to fully cooperate with the ICTY, but it also adopted nationalist rhetoric and – to the surprise of many in international politics – it even began to openly criticise the tribunal's indictments of leading Croatian army and civilian participants in the conflict. The second-strongest party in government, the Croatian Social Liberal Party (HSLP) soon left the government, arguing that Račan should have been more explicit in defending the 'dignity of the Homeland War', which the ICTY had apparently disregarded by indicting some of its main leaders.

The HDZ in opposition organised massive public protests against the ICTY, against domestic courts (which in 2001 finally began to raise first charges for crimes committed by Croats), and against the Croatian government. The largest rally for the 'defence of the dignity of the Homeland War', held in Split on 11 February 2001, was attended by 150,000 supporters. The main speaker, Tudjman's successor as leader of the HDZ, Ivo Sanader, revived the ultranationalist rhetoric of the late Franjo Tudjman, when opposing the indictment of General Mirko Norac by Croatian courts on charges of crimes against humanity and the killing of approximately 40 Serb civilians near Gospić in October 1991.⁴ In his speech the then leader of the opposition said:

The [election of] 3 January 2000⁵ was one big misunderstanding. I am joining here all these who will never give up in their pride and persistence. No nation would abandon its heroes. Nor will the Croatian nation abandon the best of all Croatian sons – and these are General Bobetko, and all the other generals, including one who is not with us physically but who is with us in spirit – General Mirko Norac... The shameful politics of this government forces our generals, our Croatian officers, into hiding; they are forcing them to be ashamed of themselves and of what they did for Croatia... Here is our message to that government: we are proud of our Croatian generals, we

² Ibid, p. 1117.

³ For historical Croatian myths, see Ivo Žanić: 'The Symbolic Identity of Croatia in the Triangle Crossroads-Bulwark-Bridge', in Pål Kolstø's excellent edited volume, *Myths and Boundaries in South-Eastern Europe* (London: Hurst & Co, 2005).

⁴ In 2003, Norac was sentenced by a Croatian court to 12 years in prison for these crimes. In addition, the ICTY indicted him for crimes committed in another location in 1993 (the murder of 28 people, of which 23 were civilians and five prisoners of war) – but transferred the case to Croatian courts. On 30 May 2008, Norac was sentenced for another seven years for these crimes.

⁵ This was the day of parliamentary elections that were lost by the HDZ.

are proud of our Croatian officers, we are proud of all those who defended the homeland, and we are proud of our noble Mirko Norac.⁶

This tough line against the first attempts to address war crimes both in domestic courts and by full cooperation with the ICTY helped HDZ to quickly recover from what seemed to be a disastrous loss of support in 2000-2001. In the January 2000 election the HDZ won 30.5 % of the vote, which translated into 46 of 151 seats in Croatian parliament. On 25 January its presidential candidate, the former foreign minister Mate Granić, came only third with 22.5% of the vote. By the end of 2000, opinion polls showed that only 5% of the electorate approved the policies of the previous HDZ government. This was largely due to media reporting on various cases of corruption, abuse of office and financial malversations by the leading members of the party. The HDZ was facing a serious danger of being marginalised or even disappearing from Croatian politics altogether.

It was by its sharp criticism of the ICTY that the HDZ re-invented itself and staged a quick comeback. In May 2001, the party was supported by 16 % of the electorate, in June 2002 by 23% and in February 2003 by 30%. According to public opinion surveys, in September 2002, 84 % of Croats opposed sending General Bobetko to the Hague, whereas 71 % were against even if this meant that economic and political sanctions were to be introduced.⁷

Presenting itself as the main opponent of the ‘devaluation of the Homeland War’ was not the only reason for HDZ’s success at the 2003 elections, but it was certainly one of the most significant. At these elections, HDZ won 66 seats (or 43.4% of the vote) – enough to form a government, although not without a coalition with a number of smaller parties and representatives of national minorities. On the basis of the HDZ’s strong protests against the ICTY, political analysts expected that once in power the party would continue to pursue a sovereignist policy, and *de facto* halt any further cooperation with the ICTY.

This, however, did not happen. On the contrary, since 2003 the HDZ has completely abolished its anti-ICTY rhetoric and reformed its foreign policy. It also changed important aspects of its domestic policies, although reforms in this area were less radical. In 2003-2007, the HDZ government removed those obstacles to cooperation with the ICTY that it had inherited from the previous government. Thus by the time of the latest parliamentary elections in 2007, the state television (under strong influence of the HDZ-led government) refused to broadcast a paid political advertisement by the Croatian Party of Rights (HSP), which consisted only of short extracts from Ivo Sanader’s radically anti-ICTY speech in Split six years before.⁸ Sanader in opposition

⁶ Author’s translation of original speech. See: <http://www.youtube.com/watch?v=DWDi06iA-QY>.

⁷ Peskin and Boduszyński, op cit. in note 1, p. 1134.

⁸ For the full text of Sanader’s speech in Split see <http://www.mprofaca.cro.net/sanader.html> (accessed on 10 May 2008). The HSP spot that was banned from HTV is available : at: <http://www.hsp.hr/content/view/351/lang,hr> (accessed on 10 May 2008). The HSP however managed to get published another political broadcast – in which Sanader’s promises of non-cooperation with the ICTY in 2001 were contrasted to a statement by one of the leading

was so much different from Sanader in power that he did not want the general public to be reminded of this change.

This radical U-turn was of the utmost importance. The ICTY does not have its own mechanisms to implement policies, but largely depends on the will of nation-states to cooperate. Without domestic political changes in Croatia itself, it is hard to see how the ICTY could successfully pursue charges against Croat participants in the conflicts of the 1990s. The U-turn had enormous consequences for the domestic political scene in Croatia too. While in the whole period since its formation in 1989 the HDZ had been the key organiser and political instrument of nationalist extremism, the political change after 2003 deprived the extremists of representation in the main political institutions in Croatia. By its re-positioning itself from extreme right to moderate conservative pro-EU centre-right party, the HDZ contributed to the marginalisation of extremist political options in Croatian politics.⁹ This internal reform of the HDZ enabled the *second (post-nationalist) transition* to take place in Croatia. So, how can this change be explained?

Explaining the radical change in 2003

In explaining the reasons for Sanader's U-turn in 2003, one should pay attention to changes in the Croatian political context after the death of Tudjman, leading to changes in Croatia's foreign policy, and creating a more receptive environment for EU conditionality to work. In this context, the coordinated and consistent efforts of the ICTY and the EU to secure Croatia's cooperation with the ICTY bore fruit.

The changing political context

When Franjo Tudjman died, the HDZ was looking for a new leader. Two candidates emerged as the strongest pretenders: the former chief domestic policy advisor to Tudjman, Ivić Pašalić, and Tudjman's former *Chef de Cabinet*, Ivo Sanader. Pašalić represented hardliners, extreme nationalists, and various interest groups suspected of being linked with organised crime. Born in Herzegovina, Pašalić was also associated with some of those Herzegovinan Croats who in the late 1990s had already been indicted by the ICTY for crimes committed during the Bosniak-Croat atrocities in 1993-1994.¹⁰ By 2000, the majority of the Croatian electorate opposed the significant influences that Herzegovinan Croats had over policy-making in Croatia during the time of Franjo Tudjman. Following the death of Tudjman's right-hand man, the

HDZ politicians, Vladimir Šeks, that General Gotovina should be 'identified, located, arrested and extradited to the Hague.'

⁹ This marginalisation became obvious in the 2007 elections, in which the extreme right party, the HSP, won only one seat (of 153).

¹⁰ In 1997 the ICTY indicted Tihomir Blaškić, the General of the Croatian Defence Council (HVO), the armed formation of Herzegovinan Croats for crimes committed in Lašva Valley. In 1998, six other Herzegovinan Croats were indicted for the same crimes. One of them, Dario Kordić, was the leader of the Bosnia-Herzegovina branch of the HDZ.

Minister of Defence Gojko Šušak¹¹ (another influential Herzegovinan), Ivić Pašalić became the main protector and representative of Herzegovinan interests in Croatian politics.

On the other hand, Ivo Sanader was representative of a more moderate wing of the party. Born in Split, Sanader has a Ph.D in literature from an Austrian university, and was a theatre artistic director and a publisher before entering politics. During the first year and a half after Tudjman's death the two factions (Sanader's and Pašalić's) fought an internal battle for control over the HDZ. In the final episode of his battle, in April 2002, Sanader managed to win the intra-party elections, although rather narrowly: with 1,005 delegates at the party congress voting for him, and 912 for Pašalić.¹² In the whole period between 2000 and 2003, however, Sanader's leadership was under threat. If he wanted to secure it, Sanader simply could not afford losing votes even from more radical quarters of the party. At the same time, however, he had to modernise the party and move it towards the centre-ground. His Split speech was styled to satisfy the radical oponents within the party, and to revive its chances of becoming once again the dominant force in Croatian politics. It was only with the success at 2003 parliamentary elections that Sanader definitely managed to consolidate his leadership within the HDZ. He was now free to make a radical break with extremism – and this is what he subsequently did.

Meanwhile, in March 2003, Serbian Prime Minister, Zoran Djindjić was assassinated in a joint action of various groups belonging to the underworld network of organised crime and parts of the Serbian police Units for Special Operations (JSO). The case demonstrated that the link between state structures that were loyal to the former President, Slobodan Milošević, and the criminal underworld are still strong in Serbia. But, for the main part of the 1990s, Croatia and Serbia were 'Siamese Twins' of the conflict – the political and security situation in one of them inevitably influenced the other. As it would turn out, some of the main organisers of this assassination (for example, Milorad Luković/Ulemek Legija) had links with the Croatian underworld. Cooperation between organised crime groups in the Western Balkans flourished during the 1990s. While in public various warlords presented themselves as uncompromising nationalists, beneath the surface they developed networks of support with each other (regardless of ethnic, ideological and political backgrounds) and worked together when this benefited their interests.¹³

The assassination of Zoran Djindjić sent a clear message to all politicians in the region – and especially in Croatia – that the forces that dominated in the 1990s had not yet been fully defeated. The assassination of Djindjić – which happened only days after his appointment of a special state prosecutor for war crimes — was an additional

¹¹ Šušak died on 3 May 1998. For more on him, see Paul Hockenos *Homeland Calling: Exile Patriotism and the Balkan Wars* (Ithaca and London: Cornell University Press, 2003).

¹² See: <http://vijesti.hrt.hr/arhiv/2002/04/22/>, accessed on 26 May 2008.

¹³ For cooperation between various groups belonging to the criminal underworld, see Misha Glenny: *McMafia: Crime Without Frontiers* (London: The Bodley Head, 2008), and Miloš Vasić, *Atentat na Zorana* (Belgrade: Narodna knjiga, Politika, Vreme, 2005).

motive for Croatian politicians to act against the extremists who belonged (or claimed to belong) to 'their own' side – especially those still in official positions in the army and police, who were suspected of developing links with the criminal underworld. Once he became Prime Minister, Sanader in fact welcomed some of the ICTY indictments as they enabled him to eliminate such a threat in the most elegant way – by extradition to The Hague.

Political changes in the Western Balkans following the end of Tudjman's and Milošević's reign in Croatia and Serbia respectively, opened a realistic perspective for all countries of the region to move closer to membership of the European Union – but not without serious domestic reforms and enhanced mutual cooperation within the region. In addition, with the defeat of Slobodan Milošević in Serbia, and subsequent confederalisation of the Federal Republic of Yugoslavia into the State Union of Serbia and Montenegro (SCG) in 2002, Croatia no longer had any reason to fear that Belgrade would favour the re-creation of a 'new Yugoslavia.'

Thus, in the first months after becoming the Prime Minister, Ivo Sanader indicated the change of policy towards Belgrade. He proposed close cooperation, and found it easy to work with new Serbian Prime Minister, Vojislav Koštunica. In this he was supported and encouraged by the Croatian business elite, which saw its chance in opening of Serbian market to foreign investors. This has had profound effects on domestic politics in Croatia, and it opened the space for further (joint or at least co-ordinated) action on war crimes. However, as will be explained further in this chapter, the results were rather limited.

The next significant factor in Sanader's change of course was coalition politics. Out of political necessity, in 2003 the HDZ entered into a coalition agreement with the main party of Croatian Serbs, the Independent Democratic Serb Party (SDSS). This coalition survived elections in 2007, when its position was further consolidated by a representative of the SDSS, Slobodan Uzelac, being appointed the Deputy Prime Minister in charge of regional development. The HDZ-SDSS coalition eased tensions between ethnic Serbs and ethnic Croats throughout the country. It also introduced a model of bi-national cooperation rather than conflict at the highest and middle levels of politics. Less has been done on lower levels, in municipalities and villages. This has been a slow and painful process. Nevertheless, with the main Serb party now in government, it became more difficult to avoid and/or undermine ICTY cooperation from within the official institutions. Although the SDSS has been cautious on the issue of the 'Homeland War', it nevertheless used its new position to *de facto* challenge some of its main aspects, as well as to actively raise issues of crimes committed against ethnic Serbs in 1995. This has been done with mixed success.

Meanwhile, some of the leading participants in the 'Homeland War' started to tarnish its mythical image. The official discourse developed by Croatian elites in the aftermath of the conflict presented Croatia as both victim and victor in the war. On 13 December 2000 a special declaration was enacted by the Croatian parliament, which

defined the character of Croatian participation in the war in the 1990s as 'just and legitimate, defensive and liberating.'¹⁴ Peskin and Boduszyński identify the adherence to such a one-sided definition of the war as being one of the main impediments to Croatia's cooperation with the ICTY. Although the text of the Declaration also invites Croatian courts to process all 'possible instances of individual crimes' committed during the war, actual indictments of Croatian participants were seen as contravening Article 5 of the Declaration by which the state was invited to 'provide full protection, respect and welfare' of all the 'defenders'.

However, in recent years there have been several cases in which some of the main participants in the Homeland War, including some its 'heroes', were exposed in illegal or unethical situations. The most extreme example is that of General Ivan Korade, the former commander of 7th Army Brigade, the first to enter Knin upon its re-taking by Croatian forces in August 1995. In March 2008, Korade murdered four civilians and a policeman before committing suicide in what was the worst case of uncontrolled use of weapons in the post-war Croatia.¹⁵ Then stories of other crimes committed by this 'hero' (who was never indicted by the ICTY) became public. Among them was the case of five Serb prisoners of war whose murder he allegedly ordered in 1995.¹⁶ Public prosecutors – as it turned out – knew about the case, but had decided to not pursue it further, apparently because no witnesses were willing to testify. It was only when Korade committed crimes against (Croat) civilians that these previous crimes came to public attention.

Another General, Vladimir Zagorac, was indicted by Croatian courts on charges of embezzlement of about 5 million euro of the funds collected by the Croatian diaspora for defence purposes during the 1992-1995 period.¹⁷ In 2007 Zagorac fled to Austria and – unsuccessfully, as it would turn out – launched legal action in order to avoid extradition to Croatia. It was only then then it was 'discovered' that he also had strong links with networks of organised crime – both within Croatia and elsewhere in the Western Balkans. On 2 March 2009 he was sentenced to seven years imprisonment and a confiscation of property amounting to 39.4 million Kuna (about 5.25 million euro).

Cases such as these – to mention but a few – undermined to a degree the myth of the Homeland War, enabling a more critical reflection on the recent past. This was also the case because they openly posed a question of justice and equality between those ordinary soldiers who were drafted (often under threat) to the 'Homeland War' in which they risked their lives, and those in high positions of authority during that war who did not really see much of the frontline, yet had done extremely well for

¹⁴ The full text of the declaration is available in *Narodne novine* (the official gazette of the Republic of Croatia), at <http://www.nn.hr/clanci/sluzbeno/2000/1987.htm> (accessed on 27 May 2008).

¹⁵ See: http://www.totalportal.hr/article.php?article_id=187528 (accessed on 28 May 2008).

¹⁶ See: <http://www.jutarnji.hr/clanak/art-2008,4,3,,114666.jl> (accessed on 28 May 2008).

¹⁷ See:

<http://www.balkantimes.com/cocoon/setimes/xhtml/bs/features/setimes/newsbriefs/2007/12/11/nb-08> (accessed on 17 May 2008).

themselves. All this only further facilitated the government's cooperation with the ICTY.

Changing foreign policy priorities

During the 1990s, Croatia's official attitude towards the project of European integration was mixed. On the one hand, HDZ under Tudjman argued that Croatia had 'always' belonged to Europe for historical, geographical, cultural and political reasons, and should thus, naturally, 'return to Europe' by 'leaving the Balkans behind'. However, Tudjman was also critical of the European Union, for both ideological and pragmatic reasons. In his books, he argued that multi-cultural entities are not viable in the long-term.¹⁸ The lesson from the collapse of Yugoslavia – a multicultural and largely confederal political structure – should have been learnt, he said, by Brussels too. Thus the very project of the European Union – especially in its post-Maastricht phase – was viewed with scepticism and suspicion. For Croatian nationalists, it was difficult to accept that one day, in an enlarged European Union, there would be no heavily guarded border with Serbia, or Bosnia-Herzegovina (and in particular with its Republic of Srpska), and that the level of integration with these neighbours would become higher than it had been in the last years of Yugoslavia.

Tudjman's criticism of the EU was also based on its alleged failure to support Croatia during the most difficult times of the conflict – in particular prior to the destruction of Vukovar, in November 1991. Had it not been for the decisive support by the US in 1995, Tudjman argued, Croatia would have waited much longer for the reintegration of its territory. When the EU criticised him for not punishing crimes committed by Croatian troops in former Krajina and Bosnia-Herzegovina, and for his authoritarian style of governance, he responded with anger:

Some European states dare to teach us lessons on how to treat minorities. They have forgotten that a democratic France, for example, does not even recognise the existence of minorities on its soil. Or, they urge us that we must return all Serbs who fled Croatia during the war back to Croatia, but they forget that they could not solve problems like that between the Czech Republic and Germany, etc.¹⁹

Following such rhetoric, Croatia's relationship with the EU entered a most difficult phase, and was *de facto* frozen in 1995-2000. This changed only in January 2000, when HDZ lost parliamentary elections. The EU reacted quickly and enthusiastically. Already in November 2000, the heads of states and governments of the EU held the summit in Zagreb the launched the Stabilisation and Association Process, and in 2001

¹⁸ See, for example, his book *Nacionalno pitanje u suvremenoj Europi*, 5th edition (Zagreb: Nakladni zavod Matice Hrvatske, 1996).

¹⁹ 'Interview Predsjednika Republike dr Franje Tuđmana glavnim i odgovornim urednicima hrvatskih javnih glasila, 22 listopada 1996 u Predsjedničkim dvorima' (an Interview to editors-in-chiefs of the Croatian media), available at the Official Site of the President of the Republic of Croatia, on 19 November 1996: <http://www.predsjednik.hr/iv-2210.htm> (accessed in December 1996).

the SAA was signed with Croatia. However, the lack of cooperation with the ICTY halted the process of EU accession once again. Thus, Croatia missed not only the chance to join the EU in the ‘big bang’ of 2004, but also in 2007 – with Bulgaria and Romania.²⁰

With marginalisation of the Tudjmanists in Croatian politics as of 2003, the most significant obstacles to EU accession disappeared. The two largest parties – the HDZ in government and SDP in opposition – agreed to form an informal ‘Pact for Europe’ and to support each other in jointly leading the country towards the EU. But the lack of full cooperation with the ICTY remained an obstacle which led to a new delay in the ratification of the SAA. This obstacle was fully removed only after the arrest of General Gotovina, in December 2005.

At the same time, Croatia changed its policy towards the countries of the Western Balkans. During the Tudjman era, regional cooperation was ruled out by the president’s fears that it might lead to a ‘reconstruction’ of some ‘new Yugoslavia’ (despite the fact that actually there was no desire for its reconstruction in any other parts of former Yugoslavia, including in Serbia). However, by 2003 Croatia realised that one possible road to Brussels leads via the capitals of the neighbouring countries: primarily Belgrade and Sarajevo. Stability and reconciliation in the Western Balkans became a precondition for accession to the European Union. For this reason too, Croatia improved bilateral relations with both Bosnia-Herzegovina and Serbia, and in 2005 (nine years after it was created) joined the Southeast European Cooperation Process.²¹

This new policy improved regional cooperation in all areas, including in security and defence. This in turn enhanced co-ordination of actions against organised crime, as well as addressing the remaining issues of war crimes and crimes committed during the conflict of the 1990s.

ICTY and EU policy towards Croatia

As already explained, the ICTY and EU coordinated to a reasonable degree their policies of ‘sticks and carrots’ towards Croatia. The EU accession talks were in principle conditioned upon full cooperation with the ICTY, and the reports on this cooperation were a substantive part of the decision-making process – although there was a degree of flexibility in the interpretation of their importance for this process. It was only when the ICTY confirmed that Croatia had really improved cooperation and

²⁰ More on development of EU-Croatia relations in this period is available in an article by this author, ‘Croatia and the European Union: a long-delayed journey’, *Journal of Southern Europe and the Balkans*, vol. 8, no. 1, February 2006, pp. 85-103.

²¹ In 2007 Croatia’s deputy foreign minister, Hidajet Bišćević, even became the Secretary-General of the newly established Regional Cooperation Council. See: http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2007/05/25/feature-02.

was assisting the efforts to identify, arrest and extradite the war crime suspects, that the EU approved further steps in talks between EU and Croatia. This policy was successful. Not only did co-ordinated pressure from Brussels and The Hague secure Croatia's full commitment to working with the ICTY, but it also strengthened moderate and pro-European forces domestically. The ICTY indictments removed some of the main protagonists of extreme nationalism from the Croatian public scene. Marginalisation of the extremists domestically would have been a much more difficult task had it been left entirely to forces within Croatia itself. Once the HDZ moved away from extremism in 2003, the pressure from the ICTY assisted the process of further consolidation of moderate and pro-European policies. This was in sharp contrast to the situation in 2000-2003, when the ICTY indictments in fact became an obstacle to consolidation of the Račan government, and when they – unintentionally – helped the consolidation of the HDZ-led opposition that rallied against the 'discrediting of the Homeland War'.

One can only conclude that domestic forces played a very important role in the success of the ICTY in achieving its objectives. On this particular issue (co-operation with the ICTY) the external factors played an important and largely constructive role in supporting the anti-extremist forces in Croatian politics, but it was primarily the transformation of the domestic political scene that secured a break with the Tudjmanist policy of isolationism and nationalist extremism. This change was due to both a significant shift in Croatian public opinion in the post-conflict period, and to changed circumstances in the region. It was possible only once Franjo Tudjman died – not before.²² Above and beyond all these contributing elements, change after 2003 was caused by enhanced understanding among Croatian nationalists that the membership of the European Union can only secure and enlarge – not endanger or diminish – the level of *de facto* sovereignty of the new Croatian state.

Although internationally recognised back in January 1992, Croatian internal and external sovereignty remained rather unfulfilled and largely symbolic throughout the 1990s. Even when Croatia re-integrated the breakaway regions of Krajina, Western and Eastern Slavonia under its legal sovereignty, it still remained the subject of various international inspections and observations. Throughout the 1990s there were UN and OSCE missions on Croatian territory, and the ICTY commanded authority that superseded that of the domestic legal system. This – from the nationalists' point of view entirely undesirable – supervision hurt their pride, and prompted them to do what was necessary in order to transform Croatia from an 'internationally supervised state' into a 'fully sovereign state'. Croatian moderate nationalists – including those in the HDZ – concluded that it was only via membership of the EU that these forms of external supervision would cease. Thus, they decided to cooperate.

The remaining problems

²² It is very difficult to imagine anything similar to the 5th October (2000) protests against Milošević (in Serbia) happening in Croatia. It is also very unlikely that Tudjman would have been removed from power, arrested and extradited to The Hague had he been indicted – as Milošević was in June 2001.

Croatia's improved record of cooperation with the ICTY since 2003 has not been matched with similar improvement in all areas of transitional justice, which was largely due to the lack of external pressure on the government in Zagreb. The results are particularly weak when it comes to raising public awareness of the war crimes committed by Croats in Bosnia-Herzegovina and the breakaway region of Krajina. In fact, for a long time there was no serious will to openly discuss war crimes committed by Croats. Content analysis of the news programmes of the state-owned Croatian Television and of the largest-circulation daily *Večernji List*, concludes that these topics were 'covered very little and very superficially'.²³ There are some honourable exceptions to this trend though: the Split-based weekly *Feral Tribune* has since its first issue (in 1993) been an outspoken reporter on crimes committed by all sides, and so were two marginal publications: the anti-war magazine *Arkzin*, and the left-wing monthly *Hrvatska Ljevica*. But all three have since closed down, due to financial and political pressure against them. These pressures were – at least in part – a consequence of its writing about the war crimes. The state-television is still rather closed when it comes to the topic of the war crimes, with the possible exception of the popular political talk-show *Latinica*.

In line with other former Yugoslav states (with the partial exception of Bosnia-Herzegovina), Croatia decided not to implement lustration of those who held public office in the 1990s. Even those who were currently facing trials for war crimes or indeed those who (like General Mirko Norac) have been sentenced for them are still treated primarily as the 'defenders in the Homeland War', not as accused and convicted of committing serious crimes. Croatian law does not allow for a military rank to be taken away from retired military personnel, thus the generals sentenced for crimes (such as Norac) can still count on a high state pension and privileges based on their military rank.

The state contributes to funding the legal defence of those on trial at the ICTY, and assists their defence teams in building the case. Public opinion polls conducted in Croatia reveal a high degree of animosity towards the ICTY, which is still often portrayed as being 'anti-Croatian'. The main complaint about its activities is on account of the ICTY's alleged attempt to promote an 'artificial balance' between Serb and Croat war crimes. The overwhelming majority of Croats see Croatia as being the victor of the legitimate, defensive and just war, and the victim of (Serbian) aggression. They ask themselves: can the side that is acting in self-defence be said to have committed war crimes? The idea that some Croats too committed crimes against others is difficult to accept.

There are few NGOs in Croatia focused on issues of war crimes, and *transitional justice* in general. In addition to the Croatian Helsinki Committee for Protection of

²³ Stojan Obradović *ICTY Coverage on Croatian Television and in Vecernji List*, available at: <http://www.mediaonline.ba/en/?ID=175> (accessed on 29 May 2008).

Human Rights (HHO), the most active is Zagreb-based *Documenta*. Its recent report identifies four major problems with regard to issues of transitional justice in Croatia.²⁴ Firstly, trials for war crimes in domestic courts are still often biased against ethnic Serbs, and/or in favour of ethnic Croats. Members of the Serb minority are much more likely to be indicted and sentenced for such crimes than members of the Croat majority (on this, see also chapter 3). Secondly, many of these trials were conducted *in absentia*, without the accused being present.²⁵ Thirdly, there is a complete lack of adequate witness protection, and some witnesses (or potential witnesses) for the ICTY have been murdered in circumstances that have not been clarified.²⁶ During the trial of the wartime commander of defence of Osijek, Branimir Glavaš, the media openly revealed the identity of key witnesses, who were subsequently harassed and subjected to threats. The same was the case in the trial against members of the military police suspected of the torture and killing of a number of Montenegrin and Serb prisoners in an *ad hoc* prisoners camp, Lora, in Split.

Fourthly, there is still insufficient legal representation of the victims. In addition, there is not much political or media pressure to address the crimes committed against Croatian Serbs. This is largely due to the fact that many of them – about 300,000 according to some official estimates²⁷ – left Croatia following the military and police actions of Croatian forces against the self-declared Krajina in 1995. Only about 120,000 have returned since, but a very large number of them only formally, to regulate citizenship and property rights – rather than to physically move back permanently.²⁸ Subsequently, they have not participated in discussions in the Croatian media. Despite its position in government, the main Serb party (SDSS) is in no position to insist on the issue of crimes committed by Croatian forces being raised publicly. Serb politicians expect their Croat partners in government to take a lead on this sensitive issue. They did, however, put on the agenda the issue of property return – both in the physical sense and in terms of property rights. Whereas the Croatian state has funded restitution of the property destroyed during the war (regardless of to whom it belonged), it is still the case that tenancy rights that were cancelled in court proceedings during and after the war have not been restored to ethnic Serbs. According to estimates by Serb political parties, in Croat-controlled areas, there were about 23,700 cases in which ethnic Serbs lost tenancy rights following extended

²⁴ See ‘Transitional Justice in post-Yugoslav countries’, Report for 2006, *Documenta*, ‘Fond za humanitarno pravo’, Istraživačko-dokumentacioni centar, Zagreb, Belgrade and Sarajevo, 2006.

²⁵ See also Thierry Cruvelier and Marta Valiñas: ‘Croatia: Selected Developments in Transitional Justice’, ICTY *Occasional Paper Series*, December 2006.

²⁶ See the case of Milan Levar, reported in: <http://news.bbc.co.uk/2/hi/europe/901987.stm> (accessed on 30 May 2008).

²⁷ See Human Rights Watch at: <http://hrw.org/english/docs/2003/09/03/croati6342.htm> (accessed on 28 May 2008).

²⁸ According to a recent study on the return of Croatian Serbs commissioned by the UNHCR office in Zagreb, only between 46,000 and 54,000 of those Serb refugees who returned to Croatia in fact live in Croatia – whereas the remaining 51,000 – 60,000 still live outside Croatia, most often in Serbia, despite registering an address in Croatia. See Milan Mesić and Dragan Bačić: ‘Sustainability of Minority Return in Croatia’, UNHCR, Zagreb, 2007, p. 92.

absence from their socially-owned flats.²⁹ In addition, there were thousands of similar cases on the territory once controlled by the ethnic Serb entity in Krajina.

All these aspects indicate that since 2003 the Croatian government has indeed been much more successful in improving its cooperation with the ICTY than in addressing the problems of transitional justice domestically. Although the reasons for the new policy towards the ICTY were primarily to do with domestic issues (competition within the HDZ, consolidation of sovereignty, preservation of the governing coalition etc.), without the pressure from outside (from both the EU and ICTY) the change would have been much slower and limited in scope. The internal impetus for change might not have been sufficient had it not been also for external pressure. Where these external influences were weaker the change of policy was less successful.

For this reason, it seems legitimate to wonder about the prospects of transitional justice in Croatia in the aftermath of the announced closure of the ICTY in the foreseeable future. In addition, the question must be asked: what is the future of transitional justice once Croatia becomes a member of the European Union? The new policy of cooperation with the ICTY was – among other things – a *condition sine qua non* of any further accession moves. Once its main foreign policy objective is achieved, Croatia is more likely to slow down all further reforms of its various domestic policies – including in the sensitive, controversial and unpopular area of transitional justice, which is so directly linked with both the official interpretation of national identity and with still raw personal and collective memories of the turbulent recent past.

²⁹ See *Documenta* report for 2006, op. cit. in note 24.